

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the matter of:

*SBC IP Communications, Inc.  
Petition for Limited Waiver of  
Section 52.15(g)(2)(i) of the  
Commission's Rules Regarding  
Access  
to Numbering Resources*

CC Docket No. 99-200

**REPLY COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES  
COMMISSION AND OF THE PEOPLE OF THE STATE OF  
CALIFORNIA ON PETITIONS FOR LIMITED WAIVER**

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April 26, 2005

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I. **Introduction**

The California Public Utilities Commission and the People of the State of California (the CPUC or California) respectfully submit these Reply Comments to the Federal Communications Commission (FCC or Commission) pursuant to the March 11, 2005 Public Notice<sup>1</sup> seeking comment on six Petitions for Limited Waiver of 47 C.F.R. § 52.12(g)(2)(i) (me-

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<sup>1</sup> *Comment Sought On SBC IP Communications, Inc. Petition For Limited Waiver Of Section 52.12(g)(2)(i) Of The Commission's Rules Regarding Access To Numbering Resources*, CC Docket

too petitions).<sup>2</sup> The CPUC and several other parties filed Comments on April 11, 2005.

The CPUC notes that competitive fairness requires that the Commission treat similarly-situated VoIP providers equally. While the CPUC opposes granting any limited waivers, in light of the Commission's decision to grant a waiver to by SBC Internet Services, Inc. (SBCIS),<sup>3</sup> the CPUC does not oppose the six petitions to the extent that the petitioners are similar to SBCIS and seek the same relief as SBCIS. The CPUC strongly supports the recommendations of other parties, however, that all such waivers, including that of SBCIS, should be explicitly subject to several key conditions and limitations.

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## II. Opposition To Waivers of 47 C.F.R. § 52.12(g)(2)(i)

California's opposition to SBCIS' request for direct access to numbering resources stems from several concerns that were enumerated at length in the CPUC's Reply Comments on SBCIS' petition.<sup>4</sup> The principles underlying the

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No. 99-200, *Public Notice*, DA 04-2144 (rel. July 16, 2004).

<sup>2</sup> Section 52.12(g)(2)(i) requires that an applicant for numbers provide evidence that it has state authority to provide telephone service in the relevant geographic area.

<sup>3</sup> *Administration of the North American Numbering Plan*, CC Docket No. 99-200, *Order* (FCC 05-20) (rel. February 1, 2005) (*SBCIS Order*).

<sup>4</sup> Reply Comments of the California Public Utilities Commission and the People of the State of California on SBCIP Petition For Limited Waiver (August 31, 2004).

CPUC's opposition to SBCIS' petition are equally true for the waivers requested by the six petitioners. If the Commission is going to allow VoIP providers direct access to numbers, the CPUC emphasizes as an initial matter that all requirements imposed on SBCIS should be imposed on other VoIP providers that obtain waivers, and vice versa. Furthermore, the Commission should now take additional steps to ameliorate the dangers this approach poses to both consumers and competitors. These concerns seem to be reflected in many of the recommendations made in parties' April 11, 2005 Comments. As discussed below, the CPUC supports several of these recommendations.

### **III. Existing Numbering Requirements**

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#### **A. Compliance With All Numbering Requirements**

The Commission has required SBCIS, and would presumably require similarly-situated petitioners, to comply with "the Commission's numbering utilization and optimization requirements and industry guidelines and practices, including numbering authority delegated to state commissions."<sup>5</sup>

The Comments of several parties seem to reflect a concern about whether VoIP providers that obtain a waiver can, and will, comply fully with these requirements. Parties question, for example, whether a VoIP provider that

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<sup>5</sup> *SBCIS Order* at para. 9.

obtains numbering resources will be capable of participating in number pooling,<sup>6</sup> or of porting numbers both in and out.<sup>7</sup> While such requirements are unquestionably part of the numbering obligations that the Commission has imposed as a condition of granting the waiver to SBCIS, California recommends that the Commission emphasize the importance of these requirements by explicitly discussing them in additional orders granting such waivers.

## **B. State Enforcement**

The Nebraska PSC, among other parties, voices concerns similar to those raised in the CPUC's Comments – that VoIP providers who obtain waivers must be subject to the efforts of state authorities to engage in numbering conservation.<sup>8</sup> The Nebraska PSC implores the Commission “to give states great leeway in efficiently conserving numbering resources.”<sup>9</sup> Similarly, the Maine PUC “urge[s] the Commission to explicitly condition any waiver on the provider's compliance and cooperation with state facilities

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<sup>6</sup> See, e.g., Comments of the Maine Public Utilities Commission (April 11, 2005) (Maine Comments) at 5; Comments of the Nebraska Public Service Commission (April 11, 2005) (Nebraska Comments) at 7.

<sup>7</sup> See, e.g., Maine Comments at 5; Nebraska Comments at 7.

<sup>8</sup> Nebraska Comments at 6-7.

<sup>9</sup> *Id.* at 7.

requirements and state oversight.”<sup>10</sup> Even with carriers that are certificated in California, the CPUC experiences problems with getting accurate and timely NRUF filings, ensuring that number inventories do not exceed six months, and confirming that numbers are used sequentially. It is therefore very important that the Commission explicitly convey to VoIP providers that “numbering authority delegated to state commissions”<sup>11</sup> includes state jurisdiction to enforce that authority.

California does not agree with XO that “[t]he FCC, rather than the NANPA or the state commissions, is in the best position to ensure that Petitioners are currently capable of complying with all of the conditions imposed in the SBCIS Waiver.”<sup>12</sup> In support of this claim, XO later remarks that “the FCC, unlike state commissions, can make the determination once for the entire nation, which is far more efficient tha[n] requiring Petitioners to make the same showing multiple times to various state commissions.”<sup>13</sup> These claims are puzzling because numbering requirements can involve the submission of detailed information that is geographically specific. For

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<sup>10</sup> Maine Comments at 4.

<sup>11</sup> *SBCIS Order* at para. 9.

<sup>12</sup> Comments of XO Communications In Response To The Petitions For Limited Waivers Of Section 52.15(g)(2)(i) (April 11, 2005) (XO Comments) at ii.

<sup>13</sup> *Id.* at 11.

example, utilization and forecasting can obviously vary from market to market. The fact that a VoIP provider can demonstrate “facilities readiness” in one area does not mean that the VoIP provider can meet “facilities readiness” requirements throughout the country.

### **C. Federal Enforcement**

California supports the recommendation of the Michigan PSC that, in exercising its federal enforcement authority, the Commission should “realign, strengthen and publish fines and forfeitures to reflect the importance of responsibilities toward numbering resources.”<sup>14</sup> Increased fines and forfeitures will convey the seriousness with which the Commission considers violations of numbering rules. The Commission should then make sure that such actions are widely known and accessible to the industry and state commissions, perhaps by posting its decisions on numbering violations on a web page created for that purpose.

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<sup>14</sup> Michigan Comments at 7.

#### IV. Additional Conditions

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##### A. E911 Services

As with NENA, the Nebraska PSC, and the Texas 911 Alliance, California believes that E911 is vital for consumer protection, and should be a requirement of any VoIP providers that obtains a waiver.<sup>15</sup>

##### B. Number Pooling

The CPUC joins in the recommendations of parties that VoIP providers should only be able to obtain numbers in areas subject to pooling.<sup>16</sup> With the abundance of VoIP providers that are likely to seek numbers directly from the NANPA or PA, and with the apparent practice of non-geographic assignments of numbers, VoIP providers pose a unique threat to the availability of numbering resources. Iowa and Maine indicate that this is particularly true in rural areas.<sup>17</sup>

Iowa notes that, in approving SBCIS' petition, the Commission mentions number pooling but "does not appear to recognize that in rural states, pooling is not widespread."<sup>18</sup> In fact, the Commission's statements

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<sup>15</sup> See, e.g., Nebraska Comments at 6; Comments of NENA (April 11, 2005); Initial Comments of the Texas 9-1-1 Alliance (April 11, 2005).

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<sup>16</sup> See, e.g., Comments of Iowa Utilities Board (April 11, 2005) (Iowa Comments) at 3-4; Maine Comments at 4-5; Nebraska Comments at 7.

<sup>17</sup> Iowa Comments at 2-3; Maine Comments at 4-5.

<sup>18</sup> Iowa Comments at 2.



suggest that an important benefit of granting SBCIS' waiver is that the VoIP provider can use numbers more efficiently by engaging in number pooling:

Requiring SBCIS to comply with numbering requirements will help alleviate concerns with numbering exhaust. For example, the NRUF reporting requirement will allow the Commission to better monitor SBCIS' number utilization. Most VoIP providers' utilization information is embedded in the NRUF data of the LEC from whom it purchases a Primary Rate Interface (PRI) line. *Also, SBCIS will be able to obtain blocks of 1,000 numbers in areas where there is pooling, as opposed to obtaining a block of 10,000 numbers as a LEC customer.*<sup>19</sup>

The CPUC therefore recommends that the Commission facilitate pooling in those areas where VoIP providers seek numbers, and preclude VoIP providers from obtaining numbers in areas "excluded" from pooling.

This is a particular concern for the CPUC because SBCIS has sought numbers in California, but has resisted the CPUC's efforts to work with carriers to facilitate the efficient use of numbers. For example, SBCIS refused to consider establishing an Location Routing Number (LRN) using uncontaminated numbers transferred from another code-holder, which many other carriers in California have done at the CPUC's request, but instead insisted on opening new numbers for LRN purposes.

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<sup>19</sup> *SBCIS Order* at para. 9 (emphasis added).

### C. Notice Requirements

The CPUC supports the recommendations of several parties that the Commission should require VoIP providers to provide more information to state commissions. For example, the Maine PUC requests “both regulatory and numbering contacts (name, phone number, and e-mail) at the time they first request numbering resources in a particular state.”<sup>20</sup> The Nebraska PSC proposes requiring additional information that would “close some loopholes.”<sup>21</sup>

The notice to the state commission should include *at a minimum* the following information: 1) the VoIP provider’s full name and contact information, 2) a description of where the numbers will be used, 3) the projected service commencement date, 4) whether a switch is being installed, and 5) how many numbers are being requested.”<sup>22</sup>

This information should be submitted with the advance notice required by the Commission required in the *SBCIS Order*.<sup>23</sup> The CPUC has found that, in obtaining and utilizing numbers in California after receiving its limited waiver, SBCIS has been significantly less responsive in communicating with the CPUC as compared to certificated and registered

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<sup>20</sup> Maine Comments at 3.

<sup>21</sup> Nebraska Comments at 7.

<sup>22</sup> *Id.* (emphasis in original).

<sup>23</sup> *SBCIS Order* at para. 9.

carriers. In the absence of a process like carrier certification (or registration), which provides basic information about an entity seeking to serve customers in the state, requiring VoIP providers to submit more detailed information in advance of requesting numbers will facilitate a state's ability to carry out its numbering responsibilities.

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## V. ~~Caution Recommended~~

The CPUC agrees with Qwest that the Commission should be very cautious in granting waivers to petitioners, and indeed in crafting how benefits given to VoIP providers should weigh against responsibilities.<sup>24</sup> Qwest asserts that PointOne has made material admissions with the apparent intent of evading access charges.<sup>25</sup> Qwest argues that PointOne has not distinguished between “its common carriage offerings” and “its IP-enabled operations” such that, “[w]ithout a commitment that any numbering resources secured by PointOne will be used only with respect to its IP-enabled offerings, PointOne does not present facts similar to those associated with the SBCIS Petition.”<sup>26</sup> Qwest’s allegations, while not confirmed by the

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<sup>24</sup> Opposition of Qwest Communications International, Inc. To UniPoint Enhanced Services d/b/a PointOne Petition for Limited Waiver (April 11, 2005) (Qwest Comments) at 6-7.

<sup>25</sup> *Id.* at 1-2.

<sup>26</sup> *Id.* at 5.

CPUC, suggests that granting the requested waivers could raise carrier compensation issues that the Commission should consider carefully.

Furthermore, Qwest notes that PointOne is not similarly situated to SBCIS because, among other things, it does not claim to have a separate affiliate for providing IP-enabled services.<sup>27</sup> While it is possible that a separate VoIP affiliate could alleviate some of the concerns expressed by Qwest, the Michigan PSC refers to a scenario that suggests that having separate affiliates for traditional telephony and IP services can lead to other problems. Michigan argues, for example, that “[a] carrier’s ability to have an LRN for both their copper and their softswitch is duplication and must be curtailed.”<sup>28</sup> This suggests that an entity could demand (or has demanded) codes for two LRNs – one for each affiliate – and thus may unnecessarily tie up numbers, resulting in stranded numbers. These issues make it clear that the Commission should be cautious in making decisions regarding VoIP providers on a piece-meal basis.

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Respectfully submitted,

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<sup>27</sup> *Id.*

<sup>28</sup> Michigan Comments at 5 (footnote omitted).

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April 26, 2005

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